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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2251/2013*, **

Communication submitted by:	Liubou Pranevich (represented by counsel, Raman Kisliak)
Alleged victim:	The author
State party:	Belarus
Date of communication:	16 June 2010 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 13 June 2013 (not issued in document form)
Date of adoption of Views:	15 October 2018
Subject matter:	Imposition of an administrative penalty for participation in an unauthorized public event
Procedural issues:	Level of substantiation of a claim; State party's failure to cooperate
Substantive issues:	Arbitrary detention; unfair trial; freedom of expression
Articles of the Covenant:	9 (1), 14 (1) and 19 (2)
Article of the Optional Protocol:	2

1. The author of the communication is Liubou Pranevich, a national of Belarus born in 1982. She claims that the State party has violated her rights under articles 9 (1), 14 (1) and 19 (2) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is represented by counsel.

The facts as submitted by the author

2.1 The author is a journalist and has been a member of the Belarusian Association of Journalists, a public association, since 26 September 2006.[1] The Association is the founder

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Margo Waterval and Andreas Zimmermann.

and publisher of *Abazhur* magazine, which was officially registered by the State Press Committee on 12 December 2000.

2.2 At 3 p.m. on 19 August 2007, the author participated in a public event on the premises of the Vektor bar, which was hired at that time by a political party, the Belarusian Popular Front. The purpose of the event was to meet with a well-known journalist, publicist and civil activist, Pavel Severinets, and to discuss his new book. The author attended this event in order to interview Pavel Severinets and to write an article about him for Abazhur.

2.3 At around 4 p.m., police officers entered the premises, interrupted and stopped the event and detained 28 persons, including the author of the present communication. The author was then taken to the Department of Internal Affairs of the Moskovsky District Administration in Brest. There, the author explained that she was a journalist and showed her passport and a certificate attesting to the fact that she was a journalist. Later, she was interrogated by a police officer, who prepared an administrative report about her. She was charged with an administrative offence under article 23.34 (1) of the Code of Administrative Offences (violation of the established procedure for organizing or holding a public event). According to the author, similar legal actions were taken in relation to 15 out of the 28 persons who attended the book presentation on 19 August 2007. The author was released at 7 p.m. the same day.

2.4 On 3 and 4 September 2007, the author's administrative case was heard by Moskovsky District Court in Brest. During the proceedings, the police officer who had initiated administrative charges against the author stated that, although it was the first time the author had attracted police attention, journalists repeatedly wrote articles containing false reports about the police and it was possible that the author had also written such articles. The author adds that this statement was not reflected in the transcript of the court proceedings. On 10 September 2007, she submitted a written complaint about this to Moskovsky District Court.

2.5 On 4 September 2007, Moskovsky District Court found the author guilty of an administrative offence under article 23.34 (1) of the Code of Administrative Offences and issued a warning as a form of administrative penalty. Moskovsky District Court established that the author, together with the other 27 persons, had taken part in an unauthorized public event, namely the book presentation.

2.6 On 10 September 2007, the author appealed the decision of Moskovsky District Court to Brest Regional Court, which dismissed the appeal on 4 October 2007. On 1 April 2008, she submitted a request to the Chair of the Supreme Court to initiate a supervisory review of the earlier decisions. On 17 May 2008, the Deputy Chair of the Supreme Court concluded that there were no grounds on which to initiate a supervisory review of the earlier decisions. The author submits that she has thus exhausted all available domestic remedies.

The complaint

3.1 The author claims to be the victim of a violation by the State party of her rights under article 9 (1) of the Covenant. She states that her detention as a journalist was arbitrary and unlawful. She refers to article 39 of the Mass Media Act of 13 January 1995, according to which a journalist is entitled to be present at and write about any events of social importance in the exercise of his or her professional activities. Such presence does not require any prior authorization by the State party's authorities. She adds that the statement made by the police officer before Moskovsky District Court (see para. 2.4 above) confirms that her detention was arbitrary and that the true reason behind it was her professional activities.

3.2 The author also claims to be the victim of a violation by the State party of her rights under article 14 (1) of the Covenant. She claims that the State party's courts were not impartial and that she was denied justice. The author adds that she asked to call the

[1] The author provides a copy of the attestation issued by the Belarusian Association of Journalists on 3 September 2007, confirming her membership in the Association.

organizer of the public event held on 19 August 2007 (who was in detention at the time) as a witness, but her request was rejected by Moskovsky District Court without any grounds being provided. According to the author, the organizer could have confirmed that she was attending the book presentation in the exercise of her professional activities and that she and Pavel Severinets had previously agreed that she would conduct an interview.

3.3 The author further submits that she is the victim of a violation by the State party of her rights under article 19 (2) of the Covenant, because the decisions of the State party's authorities and courts violated her right to seek, receive and impart information. She argues that neither the police nor the courts provided any justification demonstrating that the above-mentioned police intervention and subsequent actions against her could be considered as necessary in a democratic society.

Lack of cooperation by the State party

4. In notes verbales dated 13 June 2013 and 6 March 2014, the Committee requested that the State party submit information and observations on the admissibility and the merits of the present communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It reiterates that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.[2]

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee notes the author's assertion that all available and effective domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 The Committee further notes the author's claim that her rights under article 14 (1) of the Covenant have been violated, as the State party's courts were not impartial and she was denied justice; her request to call the organizer of the public event (who was in detention at the time) as a witness was rejected by Moskovsky District Court without any grounds being provided. It notes that the State party has not responded to those allegations. However, in the absence of further detailed information, explanations or evidence in support of those claims on file, the Committee finds these allegations insufficiently substantiated for the purposes of admissibility, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.[3]

5.5 The Committee considers that the author has sufficiently substantiated her claims under articles 9 (1) and 19 (2) of the Covenant for the purposes of admissibility. Accordingly, the Committee declares the communication admissible and proceeds with its consideration of the merits.

[2] See, for example, *Samathanan v. Sri Lanka* (CCPR/C/118/D/2412/2014), para. 4.2; and *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1997), para. 10.2.

[3] See, for example, *Bakur v. Belarus* (CCPR/C/114/D/1902/2009), para. 6.6.

Consideration of the merits

6.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

6.2 The Committee notes the author's claim under article 9 (1) of the Covenant that her detention on 19 August 2007 was arbitrary and unlawful and that the true reason behind it was her professional activities as a journalist. The Committee also notes that the State party failed to demonstrate that the grounds for the author's detention, namely her participation — in her capacity as a journalist — in a public event organized by a third party, were lawful, necessary and proportionate for the purposes of article 9 (1) of the Covenant. In particular, there was no legal basis for detaining the author after she had been identified. The Committee further notes that a person must not be arbitrarily detained because of the exercise of his or her freedom of expression, including freedom to seek, receive and impart information.[4] Accordingly, in the circumstances described above, and in the absence of any further pertinent information on file, the Committee considers that the author's rights under article 9 (1) of the Covenant have been violated.

6.3 The second issue before the Committee is whether preventing the author — in her capacity as a journalist — from participating in a public event organized by a third party, detaining her and subjecting her to an administrative penalty for having participated in such an event constitutes an unjustified restriction on the author's right to freedom of expression, as protected by article 19 (2) of the Covenant.

6.4 In that respect, the Committee recalls that article 19 (2) of the Covenant requires States parties to guarantee the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print. The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society and constitute the foundation stone for every free and democratic society (para. 2).

6.5 The Committee recalls that article 19 (3) of the Covenant allows certain restrictions, but only such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (ordre public), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[5] Furthermore, it is normally incompatible with article 19 (3) of the Covenant to restrict the freedom of journalists and others who seek to exercise their freedom of expression.[6] The Committee also recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary for one of the legitimate aims and that they were proportionate.[7] However, in the present case, the Committee observes that neither the State party nor the courts have provided any explanation as to how the restrictions imposed on the author in the exercise of her right to freedom of expression were justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant.

6.6 The Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications.[8] In the absence of any other pertinent information from the State party to justify the restriction for the

[4] General comment No. 34 (2011) on the freedoms of opinion and expression, para. 23.

[5] Ibid., para. 22.

[6] Ibid., para. 45.

[7] See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

[8] See, for example, *Aleksandrov v. Belarus* (CCPR/C/111/D/1933/2010); *Bazarov v. Belarus* (CCPR/C/111/D/1934/2010); *Korol v. Belarus* (CCPR/C/117/D/2089/2011); *Androsenko v. Belarus*; and *Melnikov v. Belarus* (CCPR/C/120/D/2147/2012).

purposes of article 19 (3) of the Covenant, the Committee concludes that, in the present case, the State party has violated the author's rights under article 19 (2) of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under articles 9 (1) and 19 (2) of the Covenant.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to, inter alia, provide the author with adequate compensation. The State party is also under an obligation to avoid similar violations of the Covenant in the future. In that connection, the Committee reiterates that, in accordance with its obligation under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the right to freedom of expression under article 19 of the Covenant, including freedom to seek, receive and impart information, may be fully enjoyed in the State party.[9]

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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[9] See, for example, *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), para. 9; *Govsha et al. v. Belarus* (CCPR/C/105/D/1790/2008), para. 11; mutatis mutandis, *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 10; and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 10.